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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,604	08/05/2003	Kevin L. Parsons	89543	6505

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EXAMINER	
WARD, JOHN A	

ART UNIT	PAPER NUMBER
2875	

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/634,604	PARSONS, KEVIN L.	
	Examiner	Art Unit	
	John A. Ward	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 August 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *48-111* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *48-111* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 48-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuo (US 6,132, 058) in view of Vanderbelt et al (US 5,463,539).

Regarding claim 48, Kuo disclose a illumination casing for receiving a handle of a key having a light emitting diode 37 having a first lead 38, second lead 38', a power source 39 having a first side, a second side , a body 30 having a frame 23 made of a first material and at least one side cover 20 made of a second different material than the material of the frame column 3, lines 44-48.

Regarding claim 48, Kuo does not discloses a flashlight having a clip disposed on an end of the body opposite the light emitting diode.

Regarding claim 48, Vanderbelt et al ('539) discloses a miniature pocket flashlight having a frame 28, a body 14, having a first and second side (figure 4), column 3, lines 34-54 teaches that the frame is made of at least one material wherein column 4, lines 35-37 teaches that the side is made of a different material and a clip 49 located at the end of the first and second side.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Kuo having a light emitting diode with the flashlight of Vanderbelt et al in order to provide a flashlight

having a light that is operable at lower current than that of incandescent lamp and with a means to be attached to a key ring.

Regarding claim 49-86, Kuo in view of Vanderbelt et al does not teach or suggest all of different types of materials as cited in the claims of instant application regarding the frame and cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use different types of materials cited in the claims, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. ***In re Leshin, 125 USPQ 416.***

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 48-86 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 28 and 29 of U.S. Patent No. 6,749,317. Although the conflicting claims are not identical,

they are not patentably distinct from each other because the claim of instant application as written discloses all the limitations of the claim include a light emitting diodes, a body, a frame with a side cover with different materials.

Parsons et al does not disclose the frame made of a plastic, it would have been obvious to one having ordinary skill in the art the invention was made to use a plastic for the side covers since it has been held that to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use a matter of obvious design choice. ***In re Leshin, 125 USPQ 416.***

Claim 87-101 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 28 and 29 of U.S. Patent No. 6,749,317. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim of instant application as written discloses all the limitations of the claim include a light emitting diodes, a body, a frame with a side cover with different materials.

Parsons et al does not disclose the frame made of a plastic, it would have been obvious to one having ordinary skill in the art the invention was made to use a plastic for the side covers since it has been held that to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use a matter of obvious design choice. ***In re Leshin, 125 USPQ 416.***

Claims 102-111 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 28 and 29 of U.S. Patent No. 6,749,317. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim of instant application as written discloses all the limitations of the claim include a light emitting diodes, a body, a frame with a side cover with different materials.

Parsons et al does not disclose the frame made of a plastic, it would have been obvious to one having ordinary skill in the art the invention was made to use a plastic for the side covers since it has been held that to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use a matter of obvious design choice. ***In re Leshin, 125 USPQ 416.***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 571-272-2386. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAW AU 2875
September 21, 2004

JOHN ANTHONY WARD
PRIMARY EXAMINER